

## **REMARKS**

Reconsideration of the subject application in view of the present amendment is respectfully requested.

By the present amendment, the specification has been amended to delete reference to the claims therein. Claims 25-39, 42, and 45 have been canceled. Claims 40-41, 43-44, and 46 have been amended to eliminate an alleged indefiniteness therein and/or to provide their proper dependency. Claims 47-49 have been added.

Based on the foregoing amendments and the following remarks, the application is deemed to be in condition for allowance, and Action to that end is respectfully requested.

### **I. Rejection Under 35 U.S.C. § 112**

The Examiner rejected claims 39-46 under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite, pointing out specific language in claims 39 and 40 rendering these claims and claims dependent thereon indefinite. As noted above, claim 39 has been canceled, and claim 40 has been amended to eliminate, among others, the alleged indefiniteness therein.

Specifically, the language, which the Examiner indicated as being improper has been replaced with correct language.

It is respectfully submitted that all of claims 40-41, 43-44, and 46-49 comply with 35 U.S.C. § 112.

It is further respectfully submitted that claims 47-48 are in condition for allowance. Claims 47-48 correspond in scope to claims 42 and 45 which the Examiner indicated would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph, set forth in this Office action, and to include all of the limitations of the base claim and any intervening claims. Accordingly, claims 47-48, which are claims 42 and 45 so rewritten, are in condition for allowance, the rejection under 35 U.S.C. § 112, second paragraph, having been overcome by deleting language the Examiner indicated as being indefinite.

## **II. Rejection Over the Prior Art**

The Examiner rejected claims 39, 41, and 46 under 35 U.S.C. § 902(a) as being anticipated by Mahoney et al., U.S. Patent 6,450,799 (Mahoney) and/or Anderson et al., U.S. Patent No. 6,383,445 (Anderson). The Examiner further rejected claims 39, 41, 43, 44, 46 under 35 U.S.C. § 102(a) as being anticipated

by Shiver). The Examiner also rejected claims 39-41 under 35 U.S.C. § 102(a) as being anticipated by Wagener et al., U.S. Patent No. 6,368,550 (Wagener). It is respectfully submitted that claim 49 and claims 40-41, 43-44, and 46, amended to depend on claim 49, patentably define over the cited references and are allowable.

Specifically, claim 49 recites that the hot gas union (2) has an inwardly directed thickening (7) that forms, together with the oxygen injector (10), an annular nozzle slot (4) for passing and acceleration of a hot gas. None of Mahoney, Anderson, Shiver, and Wagener discloses the foregoing feature. All of them disclose a separate annular gas nozzle complete in itself.

A rejection based on U.S.C. § 102 as in the present case, requires that the cited reference disclose each and every element covered by the Claim. Electro Medical Systems S.A. v. Cooper Life Sciences, 32 U.S.P.Q. 2d 1017, 1019 (Fed. Cir. 1994); Lewmar Marine Inc. v. Barient Inc., 3 U.S.P.Q. 2d 1766, 1767-68 (Fed. Cir. 1987); Verdegaal Bros., Inc. v. Union Oil Co., 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987). The Federal Circuit has mandated that 35 U.S.C. § 102 requires no less than “complete anticipation . . . [a]nticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim.” Connell v. Sears, Roebuck & Co., 220

U.S.P.Q. 193, 198 (Fed. Cir. 1983); See also, Electro Medical Systems,  
32 U.S.P.Q. 2d at 1019; Verdegaal Bros., 2 U.S.P.Q. 2d at 1053.

None of Mahoney, Anderson, Shiver, and Wagener discloses an inwardly directed thickening that forms with the gas injector a nozzle slot. Since Mahoney, Anderson, Shiver and Wagener fail to disclose each and every feature of independent Claim 49, Mahoney, Anderson, Shiver and Wagener, as a matter of law, do not anticipate or make obvious the present invention, as defined by said independent claim.

In view of the above, it is respectfully submitted that none of Mahoney, Anderson, Shiver and Wagener anticipates or makes obvious the present invention as defined in Claim 49, and Claim 49 is patentable over the foregoing references.

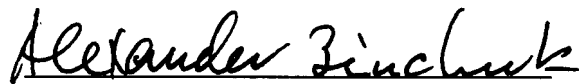
Claims 40-41, 43-44, and 46 depend on claim 49 and are respectfully submitted to be also allowable as being dependent on an allowable subject matter.

## **CONCLUSION**

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance, and allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Alexander Zinchuk". The signature is written in a cursive, flowing style.

Alexander Zinchuk, Reg. No. 30,541

Abelman, Frayne & Schwab  
666 Third Avenue, 10th Floor  
New York, NY 10017-5621  
212-885-9383